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COBURN & CROFT

ATTORNEYS AND COUNSELORS AT LAW

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101-277-4548

REPLY TO ST. LOUIS

March 16, 1993

The Honorable James L. Foreman
Chief Judge
United States District Court for
the Southern District of Illinois
750 Missouri Avenue
East St. Louis, Illinois 62202

Re: United States v. NL Industries, et al.
Civil Action No. CV 00578-JLF

Dear Judge Foreman:

Defendants have reviewed the United States' proposal of February 19, 1993, to reopen the Administrative Record ("Record") concerning the WL Industries/Taracorp Superfund Site (the "Site"). Defendants are willing to agree to the United States' proposal for the U.S. EPA to reconsider the residential soil cleanup, subject to the following conditions:

- The new comment period must afford sufficient opportunity to evaluate all relevant data and studies, including the Granite City Health Study in final form.
- U.S. EPA must commit unbiased personnel to the project.
- The proposed process must not be undermined by U.S. EPA undertaking disputed "rapid response" activities during the comment period.
- The claim against Defendants for penalties must be stricken or withdrawn.

EPA Region 5 Records Ctr.



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1. Evaluation of the Health Study.

Three years ago, Defendants and Intervening Defendants proposed that U.S. EPA base the residential soil cleanup standards on a comprehensive area-wide health assessment. U.S. EPA initially refused. However, through the continued efforts of the City of Granite City and the Illinois Department of Health, the Agency finally agreed to a blood lead study as part of the Record of Decision. The Department of Health subsequently expanded the scope of the study and received funding from the federal Agency for Toxic Substances and Disease Registry to conduct a comprehensive assessment.

Defendants have consistently argued that a health study is the key to evaluating the appropriate residential soil remedy. Defendants now understand that the study will be released in the next few weeks. Accordingly, Defendants require that the comment period remain open for at least sixty days after the final health study is published to permit all parties to evaluate and comment on that report. Furthermore, because other objections to the proposed remedy have been raised by parties who believe that they did not receive adequate notice of the first comment period, all aspects of the proposed remedy should be open to comment. Our understanding is that the above is consistent with the proposal of the United States.

2. Evaluation Within U.S. EPA

Defendants are concerned that the personnel involved in the process to date will have difficulty, in light of the three-year site history, objectively evaluating the new information. Attached to this letter is a synopsis of U.S. EPA declarations demonstrating a predisposition to not evaluate the health study fairly. Most of the statements were made by the remedial project manager for the site, Mr. Brad Bradley. Also attached are contrasting statements of the scientists hired by the State of Illinois and the federal government to conduct the health study.

In light of U.S. EPA's demonstrated unwillingness or inability to conduct an objective review, Defendants have proposed an independent review panel. Accordingly, in order for a compromise to be reached that does not involve such a panel, Defendants request that U.S. EPA assign unbiased, qualified personnel to

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assist in evaluating whatever comments are offered during the new comment period. We further request that U.S. EPA identify such new personnel to the Court and provide information as to the appropriateness of their qualifications.

3. Cessation of Premature Cleanup.

As the Court is aware, the City has been attempting to determine whether any of the cleanup activities scheduled in the near future include activities at issue in this proceeding. U.S. EPA has admitted that there might be some residential soil removal and confirmed its intentions in a letter to Granite City Mayor Von Dee Cruse. (See enclosed.)

Proceeding with disputed portions of the remedy while a process is underway to examine whether the remedy is appropriate is improper. U.S. EPA's claim that property owners have given the Agency permission to proceed does not solve the underlying question -- whether the remedy is technically justified or consistent with the National Contingency Plan. Accordingly, Defendants require that U.S. EPA refrain from undertaking any disputed actions until the comment period has been closed and a final decision has been rendered.

4. Dismissal of the Penalties Claim.

EPA should rescind the CERCLA §106 Order it is seeking to enforce in this action and should strike its penalty claims against Defendants. Once the new Record is compiled, the parties may agree on implementation of the remedy. If not, EPA could then determine whether a new order should be issued. Respondents would be required to evaluate whether sufficient cause exists to refuse to comply with any new order based on the revised Record. Pursuing the present order and penalty claims would demonstrate that the reopening of the comment period and U.S. EPA's review of the new materials is not being undertaken in an unbiased, objective fashion.

Conclusion

Defendants agree to the reopening of the Record if the issues discussed above can be resolved in a manner satisfactory to the Court and the parties. They are further agreeable to staying their

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proposal for a Technical Advisory Committee in the hope that a compromise can be reached which will lessen the burden on the Court and the City of Granite City.

Defendants suggest a conference with the Court to discuss and, hopefully, resolve these issues. We would ask that all counsel present have the necessary negotiating authority, or have their respective clients available, to reach a resolution at that time.

Very truly yours,



Louis P. Bonasorsi

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Attachments

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U.S. EPA STATEMENTS
PRIOR TO IDPH/ATSDR BLOOD LEAD STUDY

Statements of
Brad Bradley
Remedial Project Manager Granite City, U.S. EPA
and
Pat VanLeeuwen
Toxicologist, U.S. EPA

March 2, 1990
St. Louis Post-Dispatch

"We really, at this point, would not use blood-lead data to change the cleanup."

March 4, 1990
Granite City Press-Record

"the agency would welcome blood lead tests but the results would have no bearing on its extensive cleanup plans"

March 7, 1990
Granite City Journal

"As many as 90 percent of children under age 6 in the proposed cleanup area around Taracorp may have damaging levels of lead in their blood, a toxicologist for the U.S. Environmental Protection Agency said Monday."

"EPA's VanLeeuwen based her estimates on computer models of lead sites in Baltimore and Cincinnati."

"We feel that 500 ppm is probably the minimum cleanup level we would accept, because even at 500 ppm a high percentage of children start to show elevated blood levels," she said."

"VanLeeuwen's estimate that 60 percent of the young children in the area could have nerve damage or anemia."

March 22, 1990
Granite City Press-Record

"the cutoff level of 500 ppm is not going to change, no matter what a study of blood lead might show."

"A blood study is under consideration . . . But we're not going to use it to set the cleanup level . . . It's not useful to us."

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**CONTRASTING STATEMENTS OF
HEALTH STUDY INVESTIGATORS
AFTER INITIAL RESULTS WERE RELEASED**

**April 1, 1992
Granite City Press-Record**

"State study finds no lead epidemic among children"

"What all this means is that there is not a problem with lead poisoning in Granite City."

"... the blood lead levels we are looking at are not high, so we are not explaining a big problem."

Dr. Renate Kimbrough

**June 9, 1992
Statement of Dr. Renate D. Kimbrough
Before the
Subcommittee on Investigations and Oversight
U.S. House of Representatives**

"Based on our results of soil analyses and measuring lead in paint inside and outside of the houses and by looking at the distribution of the houses where children lived with elevated blood levels some preliminary conclusions can be drawn. Children with higher blood lead levels did not necessarily live in houses surrounded by higher soil lead levels. Houses with high soil lead levels were about as likely to have children with low blood lead levels. ... Children with elevated blood lead levels or with low blood lead levels were relatively evenly distributed through the entire study area, suggesting that soil lead levels had a minor effect on blood lead levels (accounting for less than 7% of the variance in blood lead). Thus, it would appear that children do not get clinically important amounts of lead from soil in the Granite City area. The total percent of elevated blood lead levels is similar to what one would expect to find in many communities even if no smelter existed."

"When visiting all of the families whose children had elevated blood lead levels we found that reasons for the elevations varied, they included renovation of old houses, houses with peeling indoor or outdoor paint, fill dirt in a garage with very high levels of lead, production of lead sinkers in the basement of a house to give a few examples."

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CITY OF GRANITE CITY TEL



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

FEB 19 1993

Honorable Von Dee Cruse
Mayor of Granite City
Granite City, IL 62040

Dear Mayor Dee Cruse:

This letter is written in response to your December 8, 1992 letter to me in which the rapid response action to remove hard rubber battery case material in Granite City, Venice and Eagle Park Areas, Illinois ("the rapid response action") was discussed. I had previously responded to this letter to your satisfaction by telephone on December 21, 1992. You informed me at that time that a written response was not necessary. However, at the request of counsel, the United States Environmental Protection Agency (U.S. EPA) is hereby providing a written response.

Regarding Paragraph A, all of the representations in this paragraph are accurate with the exception that the location near Sand Road is on Chain of Rocks Road, not Pontoon Road.

Regarding Paragraph B, the representations are accurate with the exception that contaminated soil may be removed on some of the properties listed in Paragraph A where lead concentrations in the soil exceed 500 parts per million.

Regarding Paragraph C, the representations were accurate at the time the December 8, 1992 letter was written. Currently, all required access has been obtained, the anticipated start date the rapid response action is March 10, 1993, and the estimated duration of the project is six to eight weeks.

Regarding Paragraph D, the representations are inaccurate for the fact that the Peoria, Illinois landfill was being considered, along with several other locations. Not all of excavated materials are required to go to a RCRA regulated hazardous waste facility. Some of the materials will pass Toxicity Characteristic Leaching Procedure (TCLP) test and are not considered hazardous under RCRA. There is no plan for adding materials excavated during remediation which TCLP test to the Taracorp pile. However, U.S. EPA plan to dispose of this material in a licensed landfill. Materials that do not pass the TCLP test will be treated until they pass the TCLP test. At that time, we anticipate disposing of the materials in a landfill licensed to receive hazardous waste.

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Regarding Paragraph E, the representations are accurate with the exception that there may be temporary storage for wastes which pass the TCLP, until a waste permit is obtained from the State of Illinois.

Regarding Paragraph F, the representations are accurate; however, backhoes may also be used for deeper excavations.

Regarding Paragraph G, the representations are accurate. U.S. EPA would like to note, however, that the rapid response action is separate from the residential soil cleanup only in the sense that it is being performed first; all of the remedial work is required under the same Record of Decision. Additionally, some soil removal may occur, at the request of the property owner, at residences where battery case material is located and the soil contains lead concentrations greater than 500 parts per million.

Regarding Paragraph H, the representations are accurate. The estimated starting date for the project is March 10, 1993.

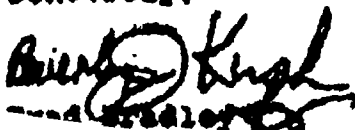
Regarding question #1, battery case materials will not be excavated if the lead concentration does not exceed 500 parts per million. The figure of 100 parts per million represents only the lower concentration range of samples collected in the fill areas; this particular area would not be excavated unless additional samples indicated lead concentrations greater than 500 parts per million.

Regarding question #2, battery case material will not be excavated from paved surfaces.

Regarding question #3, at all locations where U.S. EPA plans to excavate battery case material, the material is at or near the surface and is readily accessible to children. The excavations may, in some cases, proceed to a depth greater than two feet to 1) prevent lead from leaching into the ground water, 2) avoid future exposure to the fill material from land use changes, and 3) avoid having to place deed restrictions on the properties to restrict intrusive activities.

For your convenience, I have enclosed a copy of your December 1992 letter. As more details regarding the battery case material rapid response become available, U.S. EPA will share them with you. If you have any further questions, please contact me at (312) 886-4743.

Sincerely,



Bradley
Area Manager